

REMARKS

By this response, claims 1-6 and 10 have been cancelled without prejudice and disclaimer. Claims 7-9 and 11 are pending. Reconsideration of this application for allowance of all pending claims are hereby respectfully requested in view of the following remarks.

Rejections under 35 U.S.C. § 103

In Section 2 of the Office Action, claims 1-11 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,628,607 (Hauck) in view of U.S. Patent 6,778,506 (McDonnell). The Applicants respectfully traverse the rejection.

Regarding claims 1-6 and 10, since claims 1-6 and 10 have been canceled by this Amendment, the rejection to claims 1-6 and 10 is presently moot.

Regarding claims 7 and 11, the Applicant respectfully submit that the claimed invention is not obvious over Hauck et al. in view of McDonnell. According to MPEP §2142, to establish a prima facie case of obviousness, there must be some suggestion or motivation to modify the reference or to combine reference teachings. First, Hauck et al. do not motivate or suggest modification by a combination with another secondary reference, as suggested by the Examiner. Second, even if combined, the combination of Hauck et al. and McDonnell does not remedy the deficiencies of Hauck et al.

Hauck et al. fail to disclose that “when an arbitrary transmission path is eliminated, at least one communication node located at both ends of a logically unavailable transmission path, other than the eliminated transmission path, determines ... whether ... an annual path is formed if the logically unavailable transmission path becomes available by making the logically unavailable transmission path available temporarily ... and ... when it is determined ... that no annual path is formed, ... maintains the logically unavailable transmission path available”, as

recited in claims 7 and 11. McDonnell also fails disclose or suggest the foregoing element of the claim. Thus, there is simply no motivation or suggestion in Hauck et al. or McDonnell to use a node connected to a logically unavailable transmission path, other than the eliminated transmission path, to determine whether making the unavailable transmission path available will form an annual path and, if not, maintains the logically unavailable transmission path available. Therefore, the pending rejection fails to establish a prima facie case of obviousness under MPEP §2142.

Furthermore, even if Hauck et al. and McDonnell are combined, as noted the combination still does not teach to use a node connected to a logically unavailable transmission path, other than the eliminated transmission path, to determine whether making the unavailable transmission path available will form an annual path and, if not, maintains the logically unavailable transmission path available, as recited in claims 7 and 11. That is, the combination, even if proper, does not disclose or suggest each element of the pending claim as is required to support a rejection under 35 U.S.C. §103.

Therefore, the cited references, either alone or in combination fail to disclose, teach, or suggest the features recited in claims 7 and 11. The Applicant respectfully submits that claims 7 and 11 are patentable and requests that the rejection of claims 7 and 11 under 35 U.S.C. §103(a) be withdrawn. If the foregoing rejection is to be maintained, the Examiner is respectfully requested to identify with specifics where the foregoing element is disclosed in the prior art so as to allow the Applicant a full opportunity to respond to the rejections.

Claims 8-9 depend from claim 7. Therefore, claims 8-9 are patentable for at least the same reasons stated above with respect to claims 7 and 11 and for the additional features recited therein.

Accordingly, it is believed that all pending claims are now in condition for allowance. Applicants therefore respectfully request an early and favorable reconsideration and allowance of this application. If there are any outstanding issues which might be resolved by an interview or an Examiner's amendment, the Examiner is invited to call Applicants' representative at the telephone number shown below.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

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